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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/664,383

09/17/2003

Michael Paul Gividen

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7590

12/27/2007

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EXAMINER

ALEXANDER, REGINALD

ART UNIT

PAPER NUMBER

3742

MAIL DATE

DELIVERY MODE

12/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/664,383
Filing Date: September 17, 2003
Appellant(s): GIVIDEN ET AL.

MAILED

DEC 27 2007

Group 3700

Edward A. Squillante, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 10 October 2007 appealing from the Office action mailed 05 June 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,602,557	YIP	07-1986
6,742,670	PORTMAN et al.	06-2004

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Portman et al. '099 in view of Yip.

There is disclosed in Portman a container for serving infused liquid beverages made from infusion bags having a string and tag attached, the container comprising a receptacle 11 for holding liquid, a lid 21 for the receptacle provided with an opening having a first portion (slits) 47 which are capable of gripping the string of the infusion bag and a second portion (aperture) 61, located on the first portion, through which the string of the infusion bag can move, and a dispensing outlet 91 in the lid, wherein the first portion comprises a plurality of slits which are aligned with the aperture and extend at angles therefrom.

Yip discloses a tea bag string gripping member 24d' (figure 4d) having a first portion comprising a first slit with further slits that extend at right angles therefrom, further wherein the first slit with further slits results in four right angles, this arrangement being shown in Yip as one of many different slit configurations.

It would have been obvious to one skilled in the art to modify the slit formation of Portman with that disclosed in Yip, in order to provide an alternative arrangement for gripping the string and supporting a tea bag.

In regards to claims 5 and 14, the passing of the tag through the slit without folding is as much a function of the tag size as it is the length of the slit. Thus, the length disclosed in the prior art meets the limitations of the claims for smaller tags.

(10) Response to Argument

Appellant argues that use of the Yip reference in combination with the Portman reference would render the Portman reference non functional. This argument is presented in light of the fact that Yip discloses the slit arrangement on a side of a cup.

In response to appellant's argument it should be noted that, while it is acknowledged that Yip discloses slit arrangements in a cup side, it is the formation of the slits which is pertinent to the rejection. The slit formation is being cited as a modification of the slit arrangement in Portman, which serves the same function to hold a tea bag string and support the tea bag within a drinking vessel.

Appellant goes on to state that there is no motivation to combine the references of Portman and Yip. As a prelude to this statement appellant makes mention that the slits of the invention are formed at right angles so as to enable consistent tension or pull in order for the infusion bag to be captured and that the amount of plastic that has to be displaced is equal due to the right angles. Appellant goes on to state that the important and critical limitations set forth in the claims are not found in the combination of references.

Turning to appellant's claims it should be noted that the structural limitations set forth in the claims is of a slit formation which results in four right angles. Such an arrangement is shown in Yip along with several other formations which would function equally as well. The function of the slits being to grip a string of an infusion bag and support the bag within a drinking vessel. The operation of the plastic (tension and displacement of the plastic) is not structurally limiting in this case. The test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill in the art. References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures.

The use of a slit formation in the lid of a drinking vessel has been shown in Portman to be old and well known in the art. Appellant's modification of the slit formation to include four right angles is shown in Yip to be known, albeit not in a lid. The structural limitations of the claims have been met by the prior art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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Art Unit: 1761

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Reginald L. Alexander



Conferees:

Keith Hendricks

/Keith D. Hendricks/



Kathryn Gorgos

